

UNITED STATES OF AMERICA :
:
v. : **CRIMINAL NO. 19-356**
:
ANDREW M. BERKOWITZ :

The United States seeks a hearing with respect to conflicts of interest faced by Richard Q. Hark, Esq., who represents defendant Andrew M. Berkowitz (“Berkowitz”).¹ The conflict arises as a result of Mr. Hark’s prior representation of Thomas S. Fossile (“Fossile”), who will be charged as a coconspirator in Berkowitz’s fraud scheme. Mr. Hark recently represented Fossile in a criminal matter in The Pennsylvania Court of Common Pleas² that involves conduct substantially related to the charges against Berkowitz.

Accordingly, the government believes that this Court may find it necessary, upon conducting the required inquiry, to disqualify Mr. Hark in this matter.

On June 25, 2019,³ Berkowitz was charged by indictment with 19 counts of health care

Case No. MC-51-CR-0012132-2019. *See* EXHIBIT 1.

³ When he was arrested on these charges on June 27, 2019, Berkowitz advised federal agents that he was represented by Mr. Hark. Although Mr. Hark was out of town at the time, he negotiated by phone with government counsel to secure conditions for Berkowitz's release. Mr. Hark officially entered his appearance at Berkowitz's arraignment on July 18, 2019.

fraud, in violation of 18 U.S.C. § 1347, and 23 counts of distribution of controlled substances, in violation of 21 U.S.C. § 841.⁴

As alleged in the indictment, Berkowitz perpetrated a sophisticated, multi-year health care fraud scheme which involved the submission of thousands of fraudulent claims to government health care benefit programs and private insurance providers (collectively “insurers”). In furtherance of the fraud scheme, Berkowitz also secured tacit approval from “pill-seeking” patients to submit excessive claims to their insurers in exchange for medically unnecessary prescriptions for Oxycodone, a dangerous and highly addictive opioid with a high street value.

Berkowitz operated a medical practice under the name A+ Pain Management (“A+”) located at 10745 Haldeman Avenue, Philadelphia, PA 19116. At A+, Berkowitz held himself out as a specialist in pain management and addiction treatment medicine. Berkowitz owned Bucks Philadelphia Medical Care Group Ltd. (“BPMCG”) and Tri-County Healthcare Institute LLC (“Tri-County”), which he used to submit claims to insurers for services purportedly rendered at A+.

In 2014, Berkowitz began operating BPMCG as a non-pharmacy dispensing site (“NDS”). A physician with a registered NDS is permitted to dispense prescriptions on-site at the physician’s office. Insurers would pay for prescription drugs dispensed by a NDS if the medication was necessary to diagnose or treat an illness, injury, condition, disease, or its symptoms, and met accepted standards of medicine.

⁴ The government expects to supersede the indictment to charge Berkowitz with conspiracy to commit health care fraud and related crimes.

Berkowitz bought wholesale quantities of inexpensive generic brands of prescription drugs, such as topical analgesics, muscle relaxers, anti-inflammatories, and Schedule IV controlled substances indicated for pain, anxiety, and insomnia, which he stocked at A+. Berkowitz dispensed so-called “goodie bags” of these prescription drugs to virtually every A+ patient whose insurer covered the drugs. Berkowitz billed insurers at a significant mark-up for the drugs he dispensed to A+ patients.

Each “goodie bag” included a combination of prescription drugs, typically (1) topical analgesics, such as Relyyt and/or Lidocaine; (2) muscle relaxers, such as Chlorzoxazone and/or Cyclobenzaprine; (3) anti-inflammatories, such as Celecoxib and/or Nalfon; and/or (5) Schedule IV controlled substances, such as Tramadol for pain, and/or Eszopiclone and Quazepam for insomnia and anxiety. Berkowitz could clear more than \$4,000 in profit on each “goodie bag” he dispensed.

From on or about August 1, 2014 through on or about May 30, 2019, the government estimates that Berkowitz, with the assistance of others, defrauded insurers by at least \$3.2 million for medically unnecessary “goodie bag” drugs. Berkowitz also obtained payments for services not rendered to A+ patients.

II. Thomas Fossile

After Berkowitz’s arrest, additional evidence was uncovered showing that some A+ employees were involved with Berkowitz in perpetrating the scheme. Fossile, who was responsible for managing the “goodie bag” program for Berkowitz, was quickly identified as a likely coconspirator. Fossile proffered with government counsel on July 30, 2019 and August 21, 2019 at the United States Attorney’s Office in Philadelphia.

According to Fossile, Berkowitz submitted fraudulent claims for “goodie bag” drugs, including claims to Fossile’s insurer. After Fossile’s insurer unknowingly paid the fraudulent claims, he and Berkowitz shared the proceeds. In addition, Berkowitz paid Fossile to recruit other participants in the “goodie bag” scheme. Fossile recruited at least 15 individuals for whom Berkowitz submitted fraudulent claims for “goodie bags.” Berkowitz paid Fossile a kickback of approximately 50% of the proceeds paid by insurers for claims submitted for Fossile’s recruits. Fossile generated fraudulent “goodie bag” claims for Berkowitz of approximately \$1,220,206.

Fossile also stated that “goodie bags” were billed to insurers but never actually dispensed to patients. Fossile stored billed but not dispensed drugs in his car in order to periodically dispose of the drugs offsite. On May 7, 2019, Fossile and his vehicle were searched by police following a traffic stop in Philadelphia. Police recovered 72 bags of heroin; eight of Berkowitz’s blank prescription slips; an Oxycodone prescription from Berkowitz for Fossile; and a large box containing bulk prescription drugs, including Schedule IV controlled substances. The drugs in the box were prescribed by Berkowitz to various unknown individuals.⁵ Fossile was arrested and charged with Possession with Attempt to Distribute Controlled Substances.⁶

Fossile said he immediately contacted Berkowitz to alert him that the police found the discarded prescription drugs in his car. Fossile was afraid Berkowitz would fire him for being arrested with heroin, so Fossile led Berkowitz to believe that he was arrested for illegally possessing Berkowitz’s prescription drugs. According to Fossile, Berkowitz reacted angrily to the news. Berkowitz directed Fossile to an attorney, Mr. Hark, to represent him. According to

⁵ See Exhibit 2 *Police Arrest Report*.

⁶ The Philadelphia District Attorney withdrew all charges on July 15, 2019 citing lack of prosecution, witness failed to appear.

Fossile, Berkowitz paid Mr. Hark's fees. Although he discussed the complete circumstances of his arrest with Mr. Hark, Fossile was emphatic that Berkowitz be kept in the dark about his heroin use.

On May 15, 2019, Mr. Hark entered his appearance in Fossile's case. He accompanied Fossile to a preliminary hearing on June 13, 2019. Because the Commonwealth was not ready to proceed, the matter was continued to July 15, 2019. On July 2, 2019⁷, Mr. Hark told Fossile he would no longer represent him and that Mr. Kramer, whom Fossile had not met, would take over.

III. Principles of Law

The Sixth Amendment guarantees a criminal defendant the right to effective assistance of counsel. *U.S. Const. Amend. VI*. It is well-settled that the Sixth Amendment guarantees encompass the right to be represented by one's counsel of choice. *Powell v. Alabama*, 287 U.S. 45, 53 (1932). The right to counsel of choice gives a defendant control over his defense. *United States v Moscony*, 927 F.2d 742, 748 (3d Cir. 1991). Thus, there is a presumption in favor of defendant's choice of counsel. *United States v. Stewart*, 185 F. 3d 112, 121 (3d Cir. 1999).

However, the defendant's right to counsel of his choice is not absolute. The defendant's counsel can be disqualified by the court if the attorney has an actual conflict or a serious potential for conflict in representing the defendant. *Wheat v. United States*, 486 U.S. 153, 164

⁷ On or about June 30, 2019, the government's attorney alerted Mr. Hark to the potential conflict. Mr. Hark denied that he faced a conflict and he continued to represent Fossile and Berkowitz. On July 2, 2019, the government sent Mr. Hark a target letter for Fossile to which Mr. Hark swiftly responded stating he did not represent Fossile on the federal matter. Minutes later Mr. Hark advised that Max Kramer, Fossile's current counsel, would be retained. On July 3, 2019, Mr. Kramer entered his appearance in Fossile's state case.

(1988). “An attorney has an actual, as opposed to a potential, conflict of interest when, during the course of the representation, the attorney’s and defendant’s interests diverge with respect to a material factual or legal issue or to a course of action.” *United States v. Schwarz*, 283 F.3d 76, 91 (2d Cir. 2002). An attorney has a potential conflict of interest if “the interests of the defendant may place the attorney under inconsistent duties at some time in the future.” *United States v. Kliti*, 156 F.3d 150, 153 n.3 (2d Cir. 1998). Generally, waiver is appropriate for conflicts that the court considers to be “a lesser [actual] or only a potential conflict.” *United States v. Perez*, 325 F.3d 115, 125 (2d Cir. 2003).

When a conflict of interest is identified, the trial court must determine whether a defendant’s consent to, and waiver of, the conflict is permissible and appropriate. The Third Circuit has set forth the standard by which a district court must determine whether disqualification of counsel for a defendant in a criminal case is warranted. *Moscony*, 927 F.2d 742 (3d Cir. 1991). To make this determination, the Court must balance three important rights. First, under the Sixth Amendment to the United States Constitution, a criminal defendant is entitled to effective assistance of counsel. *Id.* at 748. Included within this right is the right to representation that is free of conflicts of interest. *Id.* Counsel’s undivided loyalty is necessary to ensure that counsel advocates his client’s case fully and without reservation. *Id.* Second, a defendant has a presumptive right to counsel of his choice; this right also derives from the Sixth Amendment right to effective assistance of counsel. *Id.* Finally, against the defendant’s Sixth Amendment rights, the Court must balance ethical rules of conduct that govern the legal profession and certain concerns that are necessary to preserve the institutional integrity of the courts and the adversarial process. *Id.*

Clearly, to disqualify a defendant's counsel of choice is a serious matter. But unless the decision was entirely arbitrary, a trial court's determination to disqualify counsel is afforded deference. *United States v. Voigt*, 89 F.3d 1050, 1074 (3d Cir. 1996). As long as the Court makes a reasoned determination on the basis of a fully prepared record, its decision will not be deemed arbitrary. *Id.* Where the decision is not arbitrary, that is, it is based on a review of the proper factors, the decision of the district court is subject to review only for abuse of discretion. *Id.*

IV. Conflicts Faced by Attorney Richard Q. Hark

The full extent of the seemingly intertwined relationships between Mr. Hark, Berkowitz, and Fossile is unclear, but the information above suffices to illustrate the ethical tangle presented here. In summary, Mr. Hark previously represented Fossile, who is Berkowitz's coconspirator and soon to be codefendant, in a substantially related matter. During his representation, Mr. Hark learned confidential information about Fossile's drug use and information about his role in the prescription drug scheme. Indeed established precedent demonstrates that such conflicts may warrant judicial correction.

Many cases confirm the propriety of disqualification where the conflicts are similar to this case. In *Wheat*, the Supreme Court held that the trial court did not abuse its discretion in refusing to permit defendant Wheat to be represented by an attorney who represented a co-defendant at an earlier trial, and another co-defendant who pled guilty, even though all three defendants purported to waive any conflict. With respect to the latter defendant, Bravo, who may have been called as a government witness at the later trial of defendant Wheat, the Court stated that the attorney, "because of his prior representation of Bravo, would have been unable ethically to provide that cross-examination." *Id.* at 164. The Third Circuit has emphasized the duty of the

attorney not to represent the defendant if the representation was adverse to either the defendant or the witnesses. Citing *Wheat*, the Court declared: “Conflicts of interest arise whenever an attorney’s loyalties are divided . . . and an attorney who cross-examines former clients inherently encounters divided loyalties.” *Moscony*, 927 F.2d at 750.

While presently Mr. Hark appears to face a potential conflict, an actual conflict would emerge should Berkowitz proceed to trial. Mr. Hark’s loyalties would clearly be divided between Berkowitz and Fossile. He would be required to cross-examine a former client using privileged information obtained during his representation, or refrain from aggressive cross-examination because of his duty to that client. Vigorous cross-examination is the bedrock of our adversarial system. Fossile is entitled to have Mr. Hark’s loyalty, and Berkowitz is entitled to have an attorney who would vigorously cross-examine Fossile.

There is also the potential for the jury to learn that Mr. Hark is personally familiar with Fossile and previously represented him. If it became known that Berkowitz paid Mr. Hark to represent Fossile, because Berkowitz’s own interests were at stake as a result of Fossile’s arrest, the jury might see counsel, and thus Berkowitz, as duplicitous putting them both in a negative light. If this were to occur, Berkowitz would be deprived of the shield that conflict-free counsel would provide.

It is axiomatic that an attorney owes a continuing duty of loyalty to a former client, not to prejudice the client or reveal its confidences. A lawyer’s duty to protect his client’s confidences even survives the client’s death. *Swidler & Berlin*, 524 U.S. 399, 410-11 (1998).

The Court in *Voigt* recognized the need for disqualification where an attorney’s loyalties are divided. *Voigt* at 1078-79. There, defendant Voigt was charged with engineering an advance

fee fraud, under the auspices of the bogus “Euro-American Money Fund Trust.” The district court disqualified an attorney who had represented both the Trust and a co-defendant of Voigt in responding to grand jury subpoenas. The Third Circuit concluded: “Since there was a strong possibility that [co-defendant] Anderskow might face cross-examination by a former attorney, there was a serious potential for a conflict of interest which, notwithstanding Voigt’s attempt to downplay it on appeal, warranted disqualification.” *Id.* at 1078.

In yet another decision, the Court held that the district court properly rejected waivers and disqualified attorneys in a criminal case who had previously represented various parties to a related civil action who became government witnesses in the criminal prosecution; the Court held that the attorneys’ participation as part of a team of attorneys required to cross-examine their former clients created a scenario of inherently divided professional loyalties. *Stewart*, 185 F.3d at 121. *See also United States v. Moses*, 58 Fed. Appx. 549, 553-55 (3d Cir. 2003) (not precedential) (district court did not abuse its discretion in disqualifying attorney who would be in position of cross-examining former client).

The decision in *United States v. Provenzano*, 620 F.2d 985 (3d Cir. 1980), is also significant. There, the district court disqualified an attorney who, in an earlier murder case, had represented a person who would be a witness at trial. “Eisenberg would be in a conflict of interest situation between the duty of vigorous representation of Thomas Andretta and the duty of loyalty to Picardo, since confidences relating to Picardo’s murder conviction and events of that period would be useful to impeach him as a witness against Thomas Andretta.” *Id.* at 1004. Notably, the Third Circuit held that an attorney’s access to privileged information of a former client is “conclusively presumed,” as the court may not inquire into such matters. *Id.* at 1005.

The Pennsylvania Rules of Professional Conduct which apply in this Court, while not dispositive, are consistent. Rule 1.7 provides:

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client; or
- (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law;
- (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
- (4) each affected client gives informed consent.

Rule 1.9(a) adds:

A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent.

Thus, according to Rule 1.9(a), Berkowitz and Fossile would have to waive their right to conflict-free counsel to allow Mr. Hark to remain in the case. However, a waiver of that kind appears presumptively inconsistent with individual self-interest. A conflict cannot be waived "if, in the circumstances of the case, the conflict is of such a serious nature that no rational defendant would knowingly and intelligently desire that attorney's representation." *Schwarz*, 283 F.3d at 95.

Even if the parties were willing to waive the conflict, this would not end the inquiry. Despite the ability of affected clients to waive a concurrent conflict of interest, the Supreme Court has stated that a trial court “[has] an independent interest in ensuring that criminal trials are conducted within the ethical standards of the profession and that legal proceedings appear fair to all who observe them.” *Wheat*, 486 U.S. at 160. Because of this independent interest, district courts “must be allowed substantial latitude in refusing waivers of conflicts of interest” in both instances where actual or potential conflicts exist. *Id.* at 163. In this regard, the Third Circuit stated,

Usually, the various rights and duties of the attorney clash when a defendant seeks to waive his right to conflict-free representation in circumstances in which the counsel of his choice may have divided loyalties due to concurrent or prior representation of . . . a co-conspirator[] or a government witness. Such a waiver, however, does not necessarily resolve the matter, for the trial court has an institutional interest in protecting the truth-seeking function of the proceedings over which it is presiding by considering whether the defendant has effective assistance of counsel, regardless of any proffered waiver. Moreover, to protect the critically important candor that must exist between client and attorney, and to engender respect for the court in general, the trial court may enforce the ethical rules governing the legal profession with respect both to client-attorney communications and to conflict-free representation, again regardless of any purported waiver. Finally, the court has an independent interest in protecting a fairly-rendered verdict from trial tactics that may be designed to generate issues on appeal.

Moscony, 927 F.2d at 749.

As noted earlier, Mr. Hark’s loyalties would be deeply divided. Thus, the improprieties of the conflicts in this case are a basic matter of fiduciary duty and the principle of the ethical rule that attorneys must avoid even the appearance of impropriety.

V. Conclusion

For all of the reasons stated above, the government respectfully requests that the Court hold a hearing to address the conflicts of interest in the representation of Berkowitz and, if the facts set forth in this memorandum are found, disqualify Mr. Hark in this matter.

Respectfully submitted,

WILLIAM M. MCSWAIN
United States Attorney

/s M. Beth Leahy

M. Beth Leahy
Anthony D. Scicchitano
Assistant United States Attorneys

CERTIFICATE OF SERVICE

I hereby certify that this pleading was electronically filed, and was thus served on this date
upon defense counsel below:

Richard Q. Hark

/s M. Beth Leahy _____
M. Beth Leahy
Assistant United States Attorney

Dated: September 4, 2019

EXHIBIT 1

MUNICIPAL COURT OF PHILADELPHIA COUNTY

DOCKET

Docket Number: MC-51-CR-0012132-2019

CRIMINAL DOCKET

Court Case



Commonwealth of Pennsylvania

v.

Thomas S. Fossile

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CASE INFORMATION

Judge Assigned: Date Filed: 05/08/2019 Initiation Date: 05/07/2019
OTN: U 164537-2 LOTN: Originating Docket No: 1924040534-0012132
Initial Issuing Authority: Final Issuing Authority:
Arresting Agency: PSP - Philadelphia Arresting Officer: Affiant
Complaint/Incident #: 1924040534-0012132
Case Local Number Type(s) Case Local Number(s)
Originating Docket Number MC-51-CR-0012132-2019
District Control Number 1924040534
Originating Document Number 1924040534-0012132

STATUS INFORMATION

<u>Case Status:</u>	<u>Status Date</u>	<u>Processing Status</u>	<u>Arrest Date:</u>
Closed	07/15/2019	Completed	05/07/2019
	05/08/2019	Awaiting Preliminary Hearing	
	05/08/2019	Awaiting Status Hearing	

CALENDAR EVENTS

<u>Case Calendar</u>	<u>Schedule</u>	<u>Start</u>	<u>Room</u>	<u>Judge Name</u>	<u>Schedule</u>
<u>Event Type</u>	<u>Start Date</u>	<u>Time</u>			<u>Status</u>
Preliminary Arraignment	05/08/2019	1:18 am	B08		Scheduled
Preliminary Hearing	05/22/2019	8:00 am	703	Judge David C. Shuter	Continued
Preliminary Hearing	06/13/2019	8:00 am	603	Judge Joffie C. Pittman III	Continued
Preliminary Hearing	07/15/2019	8:00 am	603	Judge Christine M. Hope	Scheduled

DEFENDANT INFORMATION

Date Of Birth: 05/18/1994 City/State/Zip: Huntingdon Valley, PA 19006

Alias Name

FOSSILE, THOMAS

CASE PARTICIPANTS

<u>Participant Type</u>	<u>Name</u>
Defendant	Fossile, Thomas S.

BAIL INFORMATION

Fossile, Thomas S. Nebbia Status: None

<u>Bail Action</u>	<u>Date</u>	<u>Bail Type</u>	<u>Percentage</u>	<u>Amount</u>	<u>Bail Posting Status</u>	<u>Posting Date</u>
Set	05/08/2019	Monetary	10.00%	\$10,000.00	Posted	05/08/2019

EXHIBIT 1**MUNICIPAL COURT OF PHILADELPHIA COUNTY****DOCKET**

Docket Number: MC-51-CR-0012132-2019

CRIMINAL DOCKET

Court Case

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Thomas S. Fossile

CHARGES

<u>Seq.</u>	<u>Orig Seq.</u>	<u>Grade</u>	<u>Statute</u>	<u>Statute Description</u>	<u>Offense Dt.</u>	<u>OTN</u>
1	1	F	35 § 780-113 §§ A30	Manufacture, Delivery, or Possession With Intent to Manufacture or Deliver	05/07/2019	U 164537-2
2	2	M	35 § 780-113 §§ A16	Int Poss Contr Subst By Per Not Reg	05/07/2019	U 164537-2
3	3	M	35 § 780-113 §§ A32	Use/Poss Of Drug Paraph	05/07/2019	U 164537-2

DISPOSITION SENTENCING/PENALTIESDispositionCase EventDisposition DateFinal DispositionSequence/DescriptionOffense DispositionGrade SectionSentencing JudgeSentence DateCredit For Time ServedSentence/Diversion Program TypeIncarceration/Diversionary PeriodStart DateSentence Conditions**Proceed to Court**

Preliminary Arraignment

05/08/2019

Not Final

1 / Manufacture, Delivery, or Possession With Intent to Manufacture or Deliver

Proceed to Court

F

35 § 780-113 §§ A30

2 / Int Poss Contr Subst By Per Not Reg

Proceed to Court

M

35 § 780-113 §§ A16

3 / Use/Poss Of Drug Paraph

Proceed to Court

M

35 § 780-113 §§ A32

Dismissed - LOP

Defendant Was Present

Preliminary Hearing

07/15/2019

Final Disposition

1 / Manufacture, Delivery, or Possession With Intent to Manufacture or Deliver

Dismissed - LOP

F

35 § 780-113 §§ A30

2 / Int Poss Contr Subst By Per Not Reg

Dismissed - LOP

M

35 § 780-113 §§ A16

3 / Use/Poss Of Drug Paraph

Dismissed - LOP

M

35 § 780-113 §§ A32

COMMONWEALTH INFORMATION**ATTORNEY INFORMATION**

Name: Philadelphia County District Attorney's
Office
Prosecutor

Name: Max Gerson Kramer
Private

Supreme Court No:Supreme Court No: 071246Phone Number(s):Rep. Status: Active

215-686-8000 (Phone)

Phone Number(s):

215-880-8892 (Phone)

Address:

215-880-8892 (Office)

3 South Penn Square
Philadelphia, PA 19107Address:123 S Broad St Fl 25
Philadelphia, PA 19109-1023

Representing: Fossile, Thomas S.

ENTRIES

<u>Sequence Number</u>	<u>CP Filed Date</u>	<u>Document Date</u>	<u>Filed By</u>
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EXHIBIT 1**MUNICIPAL COURT OF PHILADELPHIA COUNTY****DOCKET**

Docket Number: MC-51-CR-0012132-2019

CRIMINAL DOCKET

Court Case

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ENTRIES

<u>Sequence Number</u>	<u>CP Filed Date</u>	<u>Document Date</u>	<u>Filed By</u>
1	05/08/2019		Municipal Court - Philadelphia County
PARS Transfer			
2	05/08/2019		Stack, Patrick
Bail Set - Fossile, Thomas S.			
5	05/08/2019		Fossile, Thomas S.
Bail Posted - Fossile, Thomas S.			
1	05/15/2019		Hark, Richard Quinton
Entry of Appearance			
Entry of Appearance filed on behalf of Fossile, Thomas S..			
4	05/22/2019		Shuter, David C.
Defense Request For Continuance Attorney Unavailable			
Commonwealth Ready On Call			
Defendant Present In Courtroom/Service Received For Next Listing			
Next Court Date: 06/13/2019 Courtroom 603			
Judge: David C. Shuter			
ADA: G. Mazmanian; ATTY: R. Hark; Steno: J. Doyle; Court Clerk: K. McBride			
4	06/13/2019		Pittman, Joffie C. III
Commonwealth Request For Continuance Discovery Incomplete			
Commonwealth not ready, seizure outstanding			
Defense counsel, Richard Hark			
Must be tried both			
Defendant present			
Earliest Possible Date: 7/1/19, cw request			
Next Court Date: 7/15/19, Room 603			
Judge: Joffie C. Pittman, III ADA: Dorian/Lee Atty: Hark Steno: Catanzariti Clerk: Morrison			
1	07/03/2019		Kramer, Max Gerson
Entry of Appearance			
1	07/15/2019		Hope, Christine M.
Dismissed - LOP			
Commonwealth not ready, Police Officer failed to appear - no reason given. Defense ready, defendant present.			
Case dismissed, lack of prosecution.			
Judge: Hon. Christine Hope ADA: Justin Holmes Deff. Atty: Max Kramer Steno: Janine Doyle Clerk: Angel Soda			

EXHIBIT 1**MUNICIPAL COURT OF PHILADELPHIA COUNTY****DOCKET**

Docket Number: MC-51-CR-0012132-2019

CRIMINAL DOCKET

Court Case

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ENTRIES

<u>Sequence Number</u>	<u>CP Filed Date</u>	<u>Document Date</u>	<u>Filed By</u>
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CASE FINANCIAL INFORMATION

Last Payment Date: 05/08/2019

Total of Last Payment: -\$10.00

<u>Fossile, Thomas S.</u>	<u>Assessment</u>	<u>Payments</u>	<u>Adjustments</u>	<u>Non Monetary</u>	<u>Total</u>
<u>Defendant</u>				<u>Payments</u>	
Costs/Fees					
Bail Bond (Philadelphia)	\$10.00	(\$10.00)	\$0.00	\$0.00	\$0.00
Costs/Fees Totals:	\$10.00	(\$10.00)	\$0.00	\$0.00	\$0.00
Grand Totals:	\$10.00	(\$10.00)	\$0.00	\$0.00	\$0.00

** - Indicates assessment is subrogated

EXHIBIT 2

Philadelphia Police Department Arrest Report

Page 1 of 2 PARS

Defendant: last name: FOSSILE	Sex: Male	SSN:	DOB:
first name: THOMAS S	middle: S	Race: White	Birth Place: Philadelphia
Address: HUNTINGDON PA 19006-		Phone: 215-370-8357	
Year: 2019	District: 24	DC#: 19-24-040534	PSA: 3
PID: 1210237	SID: 40200363	OTN: U1645372	Event: 152567028
Crime Class: 3134	Desc: Investigation by State Police/Arrest	Authority: State Police	Ctrl#: 00000
DFJ: N		FBI / FID: 13K9MM9TC	CBN: 1581630

ARREST INFORMATION:

Date / Time: 05/07/2019 12:51PM District: 24 Inside/Outside: O Arrest Type: SA
3300 ARAMINGO AVE / E. WESTMORELAND ST Philadelphia PA 19125-
Slatng Date: 05/07/2019 Slatng Time: 01:21PM Sum/Warr: Issued By AC Magistrate:

OCCURRENCE:

Date / Time: 05/07/2019 12:51PM Date reported: 05/07/2019 12:51PM Inside/Outside: O Codefendants?: N
3300 ARAMINGO AV / E WESTMORELAND ST Philadelphia PA 19125-

NARCOTICS INFORMATION:

Type Code: Heroin Weight AMT: 21 Weight: Grams Street Value(\$): \$350.00
ODV Test: N/A ODV Test Result: N/A Tested By: s13121

REQUESTED HEARING DATE:

06/05/2019 00:00

REQUESTED HEARING LOCATION:

CHARGES:

Code	OC	Description	Grade	Counts
CS13A30		CSA-MANUF/DEL/PWI	F	001
CS13A16		CSA-K/I POSSESSION	M	001
CS13A32		CSA-POSS-PARAPHERNAL	M	001

VEHICLE INFORMATION:

Year / Color / Make / Model of Vehicle: 2012 / WHITE / INFINITI / G25
Vehicle State and Tag: PA KBA8278 VIN: Insurance: Y

COMPLAINANTS AND WITNESSES:

Complainant(s)

GIOVANNA DISALVATORE Age: 99 Phone(H): Phone(W): 215-000-0000 SSN: - -
Philadelphia PA 19131-

Email Address:

Witness(es)

Trooper DISALVATORE, GIOVAN Age: 99 Phone(H): 215-000-0000 Phone(W): - - SSN: 13-12-1
- - PA State Police - Phila PA 00000-

Email Address:

ARREST REPORT BY:

s13121 DISALVATORE GIOVANNI

Badge Dist/Unit Description
PA State Police

UNIT Platoon Squad Group Id
8000

ARREST REPORT APPROVED BY:

Supervisor- payroll no:

Approval Code:

POLICE PERSONNEL:

Employee Name	Payroll Number	Badge	UNIT	Platoon/Group	Vacation Dates	Vacation Description	Needed At Hearing Police/Sup	Arrest OFC.
DISALVATORE GIOVANNI	s13121		8000				Y / R	Y

ADDITIONAL INFORMATION:

Hits: Y Statement?: Lab User Fees Requested?: Y ADA Concerns?:

EMPLOYER INFORMATION:

Occupation: OPERATIONS MANAGER
Philadelphia PA -

Employer: A+ PAIN MANAGEMENT

Phone: 215-000-0000

EXHIBIT 2

Philadelphia Police Department Arrest Report

Page 2 of 2 PARS

Defendant: last name: **FOSSILE**

Sex: **Male**

SSN:

DOB:

first name: **THOMAS S**

middle **S** Race: **White**

Birth Place: **Philadelphia**

DESCRIPTIVE DATA:

Complexion **CLEAR**
Eye Color **BRO**
Glasses (Y=Yes) **0**
Hair Length **ABOVE EARS**
Teeth **NORMAL**

Eye Characteristics **NORMAL**
Facial Hair **STUBBLE**
Hair Color **BLK**
Hair Style **STRAIGHT**

EXHIBIT 2

Philadelphia Police Department Arrest Report

Page 1 of 3 PARS

Defendant: last name: **FOSSILE** Sex: **Male** SSN: DOB: **I**
first name: **THOMAS S** middle initial: **S** Race: **White** Birth Place: **Philadelphia**

Address: **IUNTINGDON VA PA 19006-**
Home Phone #: Cell Phone#: - - Cell Phone Carrier:
Email Address: Social Media Address:
Year: **2019** District: **24** DC#: **19-24-040534** PSA: **3** Ctr#: **00000**
PID: **1210237** SID: **40200363** OTN: **U1645372** Event: **152567028** CBN: **1581630**
Crime Class: **3134** Desc: **Investigation by State Police/Arrest** Authority: **State Police**
DFJ: **N** FBI / FID: **13K9MM9TC**

Arrest Name: **THOMAS FOSSILE** DOB: **00/00/0000** SSN:

ARREST INFORMATION:

Date / Time: **05/07/2019 12:51PM** District: **24** Inside/Outside: **O** Arrest Type: **SA** VIDEO: **Y**
3300 ARAMINGO AVE / E. WESTMORELAND ST Philadelphia PA 19125-
Slating Date: **05/07/2019** Slating Time: **01:21PM** Sum/Warr: Issued By AC Magistrate:

OCCURRENCE:

Date / Time: **05/07/2019 12:51PM** Date reported: **05/07/2019 12:51PM** Inside/Outside: **O** Codefendants?: **N**
3300 ARAMINGO AV / E WESTMORELAND ST Philadelphia PA 19125-
Gun Involved: **N** Gun Discharged: **N** Shooting Victim: **N** BWC Video: **N**

NARCOTICS INFORMATION:

Type Code: **Heroin** Weight AMT: **21** Weight: **Grams** Street Value(\$): **\$350.00**
ODV Test: **N/A** ODV Test Result: **N/A** Tested By: **s13121**

EXHIBIT 2**Philadelphia Police Department Arrest Report**

Page 2 of 3 PARS

Defendant: last name: **FOSSILE**Sex: **Male**

SSN:

DOB: I

first name: **THOMAS S**middle initial: **S** Race: **White**Birth Place: **Philadelphia****FACTS OF THE CASE:**

□ ON 05/07/19 AT APPROXIMATELY 0835 HOURS, I WAS TRAVELING EASTBOUND ON ALLEGHENY AVENUE BETWEEN FRANKFORD AVENUE AND ARAMINGO AVENUE. I WAS ATTIRED IN FULL UNIFORM, AND I WAS OPERATING MARKED PATROL UNIT K1-32. I OBSERVED A WHITE INFINITI G25 BEARING PA REGISTRATION KBA8278 ALSO TRAVELING EASTBOUND. I OBSERVED THAT THE FRONT WINDSHIELD WAS CRACKED HORIZONTALLY ACROSS ITS ENTIRE LENGTH. I QUERIED THE DISPLAYED REGISTRATION THROUGH THE BMV, AS WELL AS CLEAN/CIC. THE REGISTERED OWNER OF THE VEHICLE RETURNED AS HAVING AS A SUSPENDED DRIVER'S LICENSE. A PHOTO OF THE REGISTERED OWNER WAS ALSO DISPLAYED AS A RESULT OF MY QUERY. I IMMEDIATELY RECOGNIZED THE DRIVER OF THE VEHICLE AS THE REGISTERED OWNER. THE VEHICLE MADE A LEFT FROM ALLEGHENY AVENUE ONTO ARAMINGO AVENUE.

□ I ACTIVATED THE LIGHTS OF MY PATROL VEHICLE AND INITIATED A TRAFFIC STOP ON ARAMINGO AVENUE AT ITS INTERSECTION WITH WESTMORELAND STREET. I APPROACHED THE VEHICLE ON ITS DRIVER SIDE AND MADE CONTACT WITH THE OPERATOR AND LONE OCCUPANT OF THE VEHICLE, A WHITE, NON-HISPANIC MALE. I ASKED FOR HIS LICENSE. THE OPERATOR PRODUCED A COPY OF HIS PENNSYLVANIA DRIVER'S LICENSE AS WELL AS A PENNSYLVANIA IDENTIFICATION CARD. I IDENTIFIED HIM AS THOMAS STEPHEN FOSSILE, DOB: PA OLN: I ASKED FOSSILE WHERE HE WAS COMING FROM PRIOR TO THE TRAFFIC STOP. HE RELATED THAT HE WAS ON HIS WAY TO WORK AND WAS IN THE AREA AFTER STOPPING AT A DUNKIN' DONUTS. I ASKED FOSSILE WHY HE DID NOT HAVE ANY DUNKIN' DONUTS PRODUCTS WITH HIM TO WHICH HE RESPONDED HE HAD ALREADY FINISHED IT. I ASKED IF THERE WERE ANY DRUGS OR WEAPONS IN THE CAR. FOSSILE PAUSED ON DRUGS BEFORE RESPONDING "NO" TO MY QUESTIONS. HE APPEARED TO BE NERVOUS IN THAT HIS EYES WERE DARTING BACK AND FORTH AND HIS HANDS WERE SHAKING.

□ FOSSILE RELATED TO ME THAT THE REGISTRATION WAS IN THE BACK SEAT AND MOTIONED TOWARDS A CLEAR TRASH BAG THAT WAS IN THE SEAT BEHIND HIM. I OBSERVED THAT THERE WAS INDEED A REGISTRATION CARD IN THE BAG. I ALSO OBSERVED VARIOUS LOOSE MEDICATION BOTTLES WITH STICKERED PRESCRIPTION LABELS AFFIXED TO THEM.

□ FOSSILE EXITED THE VEHICLE AT MY DIRECTION AND PRODUCED HIS REGISTRATION CARD WHICH WAS EXPIRED. HE CONTINUED SEARCHING THROUGH THE BAG AND THEN FURTHER RELATED THAT HE THOUGHT HIS CURRENT REGISTRATION MIGHT ACTUALLY BE IN THE GLOVEBOX. I FOLLOWED HIM TO THE PASSENGER SIDE OF THE VEHICLE AS HE CIRCLED IT FROM THE REAR. AS HE OPENED THE GLOVEBOX, I OBSERVED A SILVER MARIJUANA GRINDER IN THE GLOVEBOX. THERE WAS ALSO A TORN, EMPTY CLEAR GLASSINE BAGGIE ON THE FLOORBOARD OF THE DRIVER'S SIDE. I KNOW THROUGH MY TRAINING AND EXPERIENCE THAT THESE CLEAR GLASSINE BAGGIES ARE COMMONLY USED TO PACKAGE BLUE GLASSINE BAGGIES WHICH CONTAIN HEROIN/FENTANYL. I INSTRUCTED FOSSILE TO SIT IN THE DRIVER'S SEAT. I RETURNED TO MY PATROL VEHICLE AND REQUESTED A SECONDARY UNIT RESPOND TO MY LOCATION SO I COULD MORE SAFELY CONDUCT A PROBABLE CAUSE SEARCH OF THE VEHICLE.

□ TROOPER SAIMIR SHEHU RESPONDED TO MY LOCATION. HE WAS OPERATING UNMARKED PATROL UNIT K1-50 WHICH IS A GOLD FORD TAURUS. I INSTRUCTED FOSSILE TO EXIT HIS VEHICLE AND SIT ON THE BUMPER OF MY PATROL VEHICLE. TROOPER SHEHU PROVIDED BACK-UP WHILE I BEGAN MY SEARCH OF THE VEHICLE.

□ I LOCATED IN THE CENTER CONSOLE FOUR (4) BUNDLES OF HEROIN, CLEAR GLASSINE BAGGIES CONTAINING BLUE WAX PAPER STAMPED "BAD BUNNY." THERE WERE 53 BAGS IN ALL STAMPED "BAD BUNNY." EACH BUNDLE OF HEROIN CONTAINED ONE PACKET THAT WAS UNSTAMPED, BRINGING THE TOTAL NUMBER OF BAGS TO 57. THERE WERE ALSO VARIOUS EMPTY BAGGIES, BOTH BLUE WAX PAPERS AND EMPTY CLEAR GLASSINE BAGGIES. THERE WAS ALSO A MINIATURE STRAW.

□ BEHIND THE DRIVER'S SEAT WAS CLEAR PLASTIC TRASH BAG. 15 MORE BAGS OF HEROIN WERE LOCATED IN THE TRASH BAG WITH VARIOUS STAMPS. THERE A LARGE BOX CONTAINING BULK PRESCRIPTION MEDICATION, MOST OF WHICH WERE NOT PRESCRIBED TO FOSSILE. SOME OF THE MEDICATION WAS IMMEDIATELY RECOGNIZABLE AS A CONTROLLED SUBSTANCE. THERE WERE ALSO EIGHT (8) BLANK DOCTOR PRESCRIPTION SCRIPTS FROM ANDREW BERKOWITZ, MD, ONE OF WHICH WAS SIGNED IN BLANK. OF THE PRESCRIPTION BOTTLES THAT WERE LOCATED, THE FOLLOWED HER DETERMINED TO BE CONTROLLED SUBSTANCES:

- 1 UNOPENED WHITE PRESCRIPTION BOX MARKED ASZOPICLONE 30 1 MG TB
- 1 UNOPENED WHITE PILL BOTTLE MARKED ANAP/CAFF/DIHYDROCODINE 90 CAPSULES
- 5 UNOPENED WHITE BOTTLE MARKED TRAMADOL HCL 30 150 MG CAPSULES
- 1 UNOPENED WHITE BOX MARKED TEMAZEPAM 30 22.5 MG CAPSULES
- 10 UNOPENED WHITE PILL BOTTLE MARKED TEMAZEPAM 30 22.5 MG CAPSULES
- 1 UNOPENED WHITE PILL BOTTLE MARKED CELECOXIB 60 200 MG CAPSULES
- 2 UNOPENED WHITE PILL BOTTLE MARKED THERAMINE 62.5 100MG CAPSULES
- 1 PRESCRIPTION FROM ANDREW BERKOWITZ M.D. FOR THOMAS FOSSILE FOR OXYCODONE 5 MG

□ FOSSILE WAS PLACED UNDER ARREST, AND I READ HIM HIS MIRANDA WARNINGS. FOSSILE INDICATED THAT HE UNDERSTOOD THE WARNINGS AS THEY WERE READ.

□ I REQUESTED THAT THE PHILADELPHIA PARKING AUTHORITY RESPOND TO MY LOCATION. THE VEHICLE WAS TOWED TO PSP PHILADELPHIA WHERE THE BULK MEDICATION COULD BE PROPERLY SEIZED AND INVENTORIED.

□ THE SEIZED HEROIN, BULK PRESCRIPTION MEDICATION, BLANK SCRIPTS, AND VARIOUS OTHER SEIZED CONTROLLED SUBSTANCES WERE ENTERED INTO EVIDENCE IN TROOP K PHILADELPHIA UNDER PROPERTY RECORD K01-14790. THE HEROIN AND SUSPECTED SCHEDULED NARCOTICS WERE SENT TO BETHLEHEM REGIONAL LABORATORY FOR DRUG IDENTIFICATION.

□ FOSSILE WAS TRANSPORTED TO THE PHILADELPHIA DETENTION UNIT FOR FINGERPRINTING AND PROCESSING.

□ BASED UPON MY TRAINING AND EXPERIENCE I BELIEVE THAT FOSSILE POSSESSED THE VARIOUS PRESCRIPTION PILLS WITH THE INTENT TO DISTRIBUTE THEM.

□ AN MVR REQUEST WAS SUBMITTED TO PRESERVE THE AUDIO AND VIDEO CAPTURED BY THE PATROL VEHICLE'S DIGITAL RECORDING EQUIPMENT.

□ REFER TO PA STATE POLICE INCIDENT # PA2019-580222.

EXHIBIT 2

Philadelphia Police Department Arrest Report

Page 3 of 3 PARS

Defendant: last name: **FOSSILE**

Sex: **Male**

SSN:

DOB:

first name: **THOMAS S**

middle initial: **S** Race: **White**

Birth Place: **Philadelphia**

SUMMARY VIOLATIONS

VC1543(A) - DRIVING WHILE OPERATING PRIVILEGE IS SUSPENDED OR REVOKED

VC4524(A) - OBSTRUCTION ON FRONT WINDSHIELD

CHARGES:

Code	OC	Description	Grade	Counts
CS13A30		CSA-MANUF/DEL/PWI	F	001
CS13A16		CSA-K/I POSSESSION	M	001
CS13A32		CSA-POSS-PARAPHERNAL	M	001

REQUESTED HEARING DATE:

06/05/2019 00:00

REQUESTED HEARING LOCATION:

VEHICLE INFORMATION:

Year / Color / Make / Model of Vehicle: 2012 / WHITE / INFINITI / G25

Vehicle State and Tag: PA KBA8278 VIN: .

Insurance: Y

Name and Address of Vehicle's Owner: THOMAS FOSSILE
PA 19006-

COMPLAINANTS AND WITNESSES:

Complainant(s)

GIOVANNA DISALVATORE

Age: 99 Phone(H):

Phone(W): 215-000-0000 SSN: - -

Philadelphia PA 19131-

Email Address:

Witness(es)

Trooper DISALVATORE, GIOVAN

Age: 99 Phone(H): 215-000-0000 Phone(W): - -

SSN: 13-12-1

- - PA State Police - Phila PA 00000-

Email Address:

ARREST REPORT BY:

s13121 DISALVATORE GIOVANNI

Badge Dist/Unit Description
PA State Police

UNIT Platoon Squad Group Id
8000

ARREST REPORT APPROVED BY:

Supervisor- payroll no:

Approval Code:

POLICE PERSONNEL:

Employee Name	Payroll Number	Badge	UNIT	Platoon/Group	Vacation Dates	Vacation Description	Needed At Hearing Police/Sup	Arrest OFC.
DISALVATORE GIOVANNI	s13121		8000				Y / R	Y

ADDITIONAL INFORMATION:

Hits: Y

Statement?:

Lab User Fees Requested?: Y

ADA Concerns?:

EMPLOYER INFORMATION:

Occupation: OPERATIONS MANAGER

Employer: A+ PAIN MANAGEMENT

Phone: 215-000-0000

DESCRIPTIVE DATA:

Complexion CLEAR
Eye Color BRO
Glasses (Y=Yes) 0
Hair Length ABOVE EARS
Teeth NORMAL

Eye Characteristics NORMAL
Facial Hair STUBBLE
Hair Color BLK
Hair Style STRAIGHT